

ERNHART, INC.

THOMAS HOPE, JR.

IBLA 87-98

Decided April 25, 1989

Appeal from a decision of the Colorado State Office, Bureau of Land Management, holding assignments of oil and gas lease for denial (C-08905).

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers--Rules of Practice: Appeals: Effect of

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. An assignment filed in conformance with the applicable law and regulations ordinarily requires approval by the Department as to qualifications of the assignee and sufficiency of a bond.

2. Oil and Gas Leases: Assignments or Transfers

A unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. Longstanding Departmental policy requires withholding action on the assignment until the dispute between the parties is resolved through agreement or litigation.

APPEARANCES: David M. Bratcher, Esq., Baton Rouge, Louisiana, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ernhart, Inc., and Thomas J. Hope, Jr., appeal from a decision dated August 19, 1986, by the Colorado State Office, Bureau of Land Management (BLM), holding for denial assignments of 100 percent record title interest in oil and gas lease C-08905.

Noncompetitive oil and gas lease C-08905 was originally issued effective November 1, 1954, for 2,489 acres in T. 11 S., R. 90 W., sixth principal meridian, Gunnison County, Colorado. By assignment approved effective June 1, 1977, Ralston Oil and Gas Company (Ralston) obtained the lease in its entirety. On October 26, 1981, BLM denied approval of an assignment from Ralston to the July Corporation. In The July Corp., 66 IBLA 20 (1982), this Board modified BLM's adjudication, holding that where the Department is made aware of private litigation between assignor and assignee the Department will suspend action on any assignment pending resolution of the controversy by agreement or litigation. As a result of private litigation, title to lease C-08905 was quieted in Ralston. <sup>1/</sup> On May 5, 1986, the Supreme Court of Colorado denied July Corporation's petition for writ of certiorari. While this litigation was pending, various assignments affecting record title to lease C-08905 were filed with BLM. Included in the case file is a folder containing eight unapproved assignments. Two of these assignments are the subject of this appeal. On July 2, 1981, and June 10, 1983, assignments executed July 2, 1981, and March 24, 1983, respectively, were filed with BLM wherein Ralston transferred 100 percent of record title in lease C-08905 to Ernhart, Inc.

In March 1986, BLM wrote to all the parties with pending assignments of the lease to request a copy of the final court degree so that it could proceed to process the assignments. Thereafter, in June 1986, BLM notified all the parties that processing of the pending assignments was suspended until the District Office provided a status report of the development activities on the lease. On July 17, 1986, Ralston wrote to BLM and stated:

Ralston Oil & Gas hereby formally request that the assignments from R.O.G. to Ernhart Incorporated dated July 2, 1981, and March 24, 1983, be withdrawn and removed from the case file. This letter will act as your authority to remove those assignments.

This request is made for the following reasons: Ernhart has never paid for the assignments because of the unsettled title which has now been cleared by recent finding of the Supreme Court; it has never been adjudicated by BLM, thus is entirely past the time limit prescribed by the BLM Rules & Regulations in addition after a delinquent search. No officer or directors of Ernhart have been located and no registered officer for Ernhart is available.

BLM's decision herein acknowledges Ralston's wish to withdraw the proposed assignments to Ernhart, Inc., and held:

Unless evidence has been provided to this office within 30 days of receipt of this decision, that Ernhart Incorporated has commenced some kind of legal action to establish its claim to the title in this lease, Mr. Ralston's request will be honored.

<sup>1/</sup> Ralston Oil & Gas Co. v. July Corp., Colorado Court of Appeals No. 83 CA 0720 (Dec. 12, 1985).

The two assignments will be returned to Ralston Oil and Gas Co. unapproved. Any subsequent assignments stemming from these assignments will also be denied. Since Ralston Oil and Gas Co. will retain 100 percent record title in the lease, Ernhart Incorporated will have no interest to assign. [2/]

On appeal, appellants submitted copies of various pending assignments and stated, "the chain of title properly reflects that Ralston Oil and Gas Company is not 100 percent record title owner of the minerals but that Mr. Ralston is only a partial record holder." Appellants allege that Ernhart, Inc., was Ralston's initial assignee and that "title to subsequent assignees properly flows through Ernhart." 3/

[1] An oil and gas lease may be assigned "subject to final approval by the Secretary." 30 U.S.C. | 187a (1982). The filing of a proposed assignment in accordance with the applicable law and regulations ordinarily requires approval by the Department as to qualifications of the assignee and sufficiency of a bond. 30 U.S.C. | 187a (1982); Montana Bank, Trustee, 54 IBLA 359 (1981). Indeed, on the date of execution of an assignment, the assignment is effective as between the parties (see Federick J. Schlicher, 54 IBLA 61, 65 (1981)), and all that remains is for the assignee to obtain approval of the assignment. In its decision, BLM placed the burden of establishing title to the lease on the assignees; however, an assignee asserts title to an oil and gas lease on submitting an assignment to BLM for approval. In their statement of reasons, appellants advance the position that the assignments are valid. Except for Ralston's request that the assignments be withdrawn, assuming all else is regular, there would be no grounds for BLM not to proceed to process the assignments.

[2] Ralston does not contend that approval of the assignments should be denied based on a statutory disqualification, rather it asserts that withdrawal of the assignments is warranted because Ernhart, Inc., reneged on their private agreement. In Petrol Resources Corp., 65 IBLA 104 (1982), the Board held that a unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. The Department has consistently held that it will not act on an assignment of an oil and gas lease submitted for approval when it has notice of a controversy between the parties as to the effect of validity of the assignment. Herbert P. Kenney, Jr., 96 IBLA 84 (1987), and cases there cited. The position taken by BLM in its decision herein implies that it supports Ralston in this private dispute. BLM may not, however, take any action which operates to advance the position of one party over the other. Appellants do not challenge the validity of the assignments, and there is no basis to require them to commence action to disprove Ralston's allegations.

2/ Five of the remaining assignments contained in the case file involve parties who claim a title interest in lease C-08905 through Ernhart, Inc. 3/ Thomas Hope, Jr., signed as a president of Ernhart, Inc., on the assignment dated Mar. 24, 1983. Hope is also listed as an assignee of Ernhart, Inc., on an assignment dated Mar. 25, 1983.

The fact that title to oil and gas lease C-08905 was quieted in Ralston against the July Corporation (see Ralston Oil & Gas v. July Corp., supra) has no bearing on the merits of the dispute between Ralston and appellants.

Ralston's request to withdraw the assignments did not include any evidence to show that it was entitled to the lease. Since Ralston protested approval of the assignments the burden was on Ralston to submit documentation to support its allegations that the assignments should not be processed. Based on our review of the record, we find that it was incorrect for BLM to take the action it did in this case. The proper course of action for BLM in this matter was to advise the parties it would take no action on the lease, and would preserve the status quo until the parties resolve their differences. See Charles H. Dorman, 79 IBLA 209 (1984). While BLM could justifiably establish a time period within which the parties pursued resolution of their dispute either by agreement or through litigation, it was inappropriate for BLM to interfere in the dispute by forcing the assignee to take action.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM.

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Gail M. Frazier  
Administrative Judge

I concur:

Will A. Irwin  
Administrative Judge